

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No. 450 (S/S) of 2007

1. Pradeep Madhukar Godbole
S/o Sri Madhukar Ganesh Godbole
Presently posted as Assistant Special Intelligence Officer,
Uttarakhand Police, Intelligence Headquarter,
Dehradun, Uttarakhand
2. Anil Kumar Sharma S/o Shri Ramesh Chandra Sharma,
presently posted as Assistant Special Intelligence Officer,
Uttarakhand Police, Intelligence Headquarter,
Dehradun, Uttarakhand ----- Petitioners

Versus

1. State of Uttarakhand through Secretary Principal Home,
Government of Uttarakhand, Secretariat, Dehradun,
Uttarakhand
2. Director General of Police, Uttarakhand, Dehradun
3. State of U.P. through Secretary Home, Civil Secretariat
Lucknow, U.P.
4. Director General of Police, Govt. of U.P. at Lucknow.
5. Union of India, through Secretary (Personnel) Ministry of
Personnel Training, Public Grievances and Pensions,
New Delhi ----- Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Sudhanshu Dhulia, Senior Advocate assisted by Sri Sanjay Bhatt, Advocate for the petitioner, learned Standing Counsel State of Uttarakhand for respondent nos. 1 and 2, Smt. Beena Pandey, learned Standing Counsel State of U.P. for respondent nos. 3 and 4 Smt. Anjali Bhargav for respondent no. 5.

By means of this writ petition, the petitioner has prayed for the following reliefs:

1. a writ, order or direction in the nature of certiorari to quash the order dated 20.04.2007 passed by Respondent No. 1 contained in Annexure No. 1 to this writ petition.
2. a writ, order or direction in the nature of mandamus commanding the respondents to consider representation of the petitioners regarding mutual transfer expeditiously and pass speaking order on the same in view of direction contained in letter of Central Government dated 15.09.2004.
3. any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.
4. award cost of the petition to the petitioners.

By order dated 20.04.2007, the order passed on 23.03.2007 was cancelled. The petitioners have not stated anywhere that what are the contents of letter dated 23.03.2007.

The stand of the petitioners is that they were appointed as Sub Inspector in U.P. Civil Police in the year 1990. Prior to bifurcation of State of Uttarakhand, the petitioners had opted for State of U.P. However, on 19th June, 2002, the petitioners made a requisition to the State of U.P. and State of Uttarakhand as also to Union of India for change of their option from U.P. to Uttarakhand. Final allocation list has already been published by the Government of India, wherein names of the petitioners find place in the list of candidates finally allocated to State of U.P.

Petitioners' claim is that the Government of India, Ministry of Personnel Training, Personnel Grievances and Pension, New Delhi has issued a Circular dated 15th September, 2004 to the Chief Secretary of Uttar Pradesh as well as Uttarakhand to the effect

that a large number of representations have been received from personnel requesting for consideration of their mutual transfer with another consenting State services personnel. Since the Central Government has already issued final allocation list, it finds no reason to entertain such requests. However, it is open to the successor State Government to consider requests of mutual transfer based on broad consensus arrived between the State Governments, inter alia, either defining the terms and conditions for such consideration or by finding suitable Rules for this purpose.

The submission of the learned counsel for the petitioner is that in pursuance of the aforesaid Circular of Government of India, the petitioners have applied for mutual transfer as one Smt. Prakash Kamboj, who has been finally allocated to State of Uttarakhand, wants to remain in the State of U.P. and further Sri Mahboob Ekram Khan, who has been finally allocated to State of Uttarakhand, is willing to stay in the State of Uttar Pradesh. Smt. Prakash kamboj and Sri Mahboob Ekram Khan have already applied for mutual transfer against petitioners of the present case.

Learned counsel for the petitioner has placed reliance on the judgment passed by the Division Bench of this Court on 09.08.2005 in Writ Petition No. 174 of 2005 (S/B), Smt. Dr. Suniti Mishra Vs. Union of India & Ors., wherein the Division Bench of this Court disposed of the writ petition with a direction to respondents to consider representations of petitioner, which was made for mutual transfer as expeditiously as possible and at any rate, within a period of three months from the date of receipt of a copy of judgment. Till the final decision is taken on the said representation by respondent nos. 2, 3 and 4 and the said

decision is communicated to the petitioner, order relieving the petitioner from the services of Government of Uttarakhand shall be kept in abeyance.

The petitioners are claiming such benefit mainly on the basis of Circular dated 15th September, 2005 issued by Government of India, wherein the Government of India has left it open to the successor State Governments to consider requests of mutual transfer based on broad consensus arrived between the State Governments, inter alia, either defining the terms and conditions in such consideration or by finding suitable Rules for this purpose.

The petitioners are not in a position to inform the court whether the State Governments, i.e., State of U.P. and State of Uttarakhand have reached to any broad consensus or whether the terms and conditions for such consideration or suitable Rules for that purpose have been framed or not. The State of Uttarakhand cannot unilaterally take decision on this matter as it is for both the State Governments to take decision. It is not disputed that the petitioners had opted for the State of U.P. and they have been finally allocated for the State of U.P. The only grievance remains for the petitioners is that respondents have not taken any decision on their representation for mutual transfer.

Learned Standing Counsel State of Uttarakhand has, however, submitted that the State Government has taken a decision to relieve all the personnel, who have opted for State of U.P. as expeditiously as possible.

It is not disputed that the petitioners had opted for state of U.P. and they have been finally allocated for State of U.P., no

decision has yet been taken by the State of Uttarakhand and State of U.P. for mutual transfer in pursuance to the Circular issued by the Union of India dated 15th September, 2004.

In the circumstances, I do not find any ground to direct the respondents not to relieve the petitioners for state of U.P. However, it is open to the Government to consider the representations, if any made by the petitioners, for mutual transfer, if the Government is of the opinion that the services of the petitioners are required by the State Government. The Government may pass appropriate order on the representation for mutual transfer prior to relieving of petitioners for State of U.P. in case the Government is in need of services of services of petitioners.

With the above direction, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

02.05.2007
VKS